

**U.S. ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.**

**In the Matter of:**

**El Sol Trading Inc., d.b.a. Motobravo, Inc.**

**Respondent**

**ADMINISTRATIVE  
SETTLEMENT AGREEMENT**

**AED/MSEB #7840**

This Administrative Settlement Agreement (Agreement) is made and entered into by and between the United States Environmental Protection Agency (EPA) and El Sol Trading Inc., d.b.a. Motobravo, Inc. (Respondent) having an office at 1310 S. Johnson Dr, City of Industry, CA 91745.

**Respondent**

1. Respondent is a private company, organized under the laws of the State of California.
2. Respondent imports, manufactures, and sells motorcycles, electric scooters, gasoline scooters, dirt bikes, gas scooters, and other similar items.

**Purpose**

3. The purpose of this Agreement is to resolve 592 violations of Sections 203(a) and 213(d) of the Clean Air Act (CAA), 42 U.S.C. §§ 7522(a) and 7547(d), and the regulations promulgated thereunder at 40 C.F.R. Part 86, Subpart E (the Motorcycle Regulations) and 40 C.F.R. Parts 1051 and 1068 (the Recreational Vehicle Regulations).

### Statutory Authority

4. Sections 203(a)(1) and 213(d) of the CAA, 42 U.S.C. §§ 7522(a)(1) and 7547(d), prohibit a manufacturer of a new vehicle or engine from distributing into commerce, selling, offering for sale, introducing into commerce, or importing (or causing any of the foregoing with respect to) a new vehicle or engine manufactured after the effective date of regulations applicable to such vehicle or engine unless such vehicle or engine is built in conformity with and covered by an EPA-issued certificate of conformity (COC).
5. Sections 203(a)(4) and 213(d) of the CAA, 42 U.S.C. §§ 7522(a)(4) and 7547(d), prohibit a manufacturer from failing or refusing to comply with the emissions information labeling requirements of Section 207, 42 U.S.C. § 7541.
6. Section 205(a) of the CAA, 42 U.S.C. § 7524(a), subjects any person who violates Section 7522(a) to a civil penalty for each vehicle or engine violation. The maximum civil penalty applicable to the alleged violations is \$37,500 per vehicle or engine based on the Federal Civil Penalties Inflation Adjustment Act, 28 U.S.C. § 2461, and the applicable regulations, 40 C.F.R. § 19.4, adjusting the statutory penalty from \$25,000 to \$37,500 for violations committed after January 12, 2009. These dates are relevant to the subject violations, which first occurred in March 2009.
7. Section 216(1) of the CAA, 42 U.S.C. § 7550(1), defines the term “manufacturer” as any person engaged in the manufacturing and assembling of new motor vehicles or new nonroad vehicles, or importing such vehicles for sale.
8. Section 216(2) of the CAA, 42 U.S.C. § 7550(2), defines the term “motor vehicle” as any self-propelled vehicle designed for transporting persons or property on a street or highway.

9. Section 216(10) of the CAA, 42 U.S.C. § 7550(10), defines the term “nonroad engine” as an internal combustion engine, including the fuel system, that is not used in a motor vehicle.
10. Section 216(11) of the CAA, 42 U.S.C. § 7550(11), defines the term “nonroad vehicle” as any vehicle powered by a nonroad engine that is not a motor vehicle.

### **Regulatory Authority**

11. 40 C.F.R. § 86.401-2006 extends coverage of the Motorcycle Regulations to 2006 and later model year new motorcycles, regardless of fuel.
12. 40 C.F.R. § 86.402-98 defines a “motorcycle” as any motor vehicle with a headlight, taillight, and stoplight and having: two wheels, or three wheels and a curb mass less than or equal to 793 kilograms (1749 pounds).
13. 40 C.F.R. § 86.407-78(a) prohibits a motorcycle from being manufactured for sale, sold, offered for sale, introduced, or delivered for introduction into commerce, or imported into the United States unless the motorcycle is covered by a COC, or is excluded or exempt from meeting the regulatory requirements.
14. Each COC states that it covers “only those vehicles which conform, in all material respects, to the design specifications that applied to those vehicles described in the documentation required by 40 CFR Part 86.”
15. 40 C.F.R. § 86.413-2006(a) provides that the manufacturer of any motorcycle shall, at the time of manufacture, affix a permanent and legible label that contains specified information, including a statement that the vehicle conforms to EPA regulations and that includes the model year of the motorcycle. 40 C.F.R. § 86.413-2006(a)(4)(vii).

16. 40 C.F.R. § 1051.1 extends coverage of the Recreational Vehicle Regulations to model year 2006 and later new recreational vehicles and engines, including all-terrain vehicles (ATVs).
17. The term “recreational vehicle” includes, inter alia, ATVs and off-highway motorcycles. 40 C.F.R. § 1051.801. 40 C.F.R. § 1051.801 defines “all-terrain vehicle” as a nonroad vehicle that is either: (a) designed to travel on four low-pressure tires, has a seat designed to be straddled by the operator and handlebars for steering control, and is intended for use by a single operator and no other passengers; or (b) has three or more wheels and one or more seats, is designed for operation over rough terrain, is intended primarily for transportation, and has a maximum vehicle speed of 25 miles per hour or higher.
18. 40 C.F.R. § 1068.101(a)(1) prohibits a manufacturer from selling, offering for sale, introducing into commerce, or delivering for introduction into commerce into the United States (or causing any of the foregoing acts with respect to) a model year 2006 or later recreational vehicle unless that recreational vehicle is covered by a COC. In addition, under 40 C.F.R. § 1068.101(a)(5) no person may import an uncertified model year 2006 or later recreational vehicle.
19. Each COC states that it covers “only those vehicles which conform, in all material respects, to the design specifications that applied to those vehicles described in the documentation required by 40 CFR Part 1051.”

### **Background**

20. On six different occasions, (1) March 21, 2009 (W33-07711018), (2) February 14, 2011 (W33-07836013), (3) May 28, 2011 (W33-07852358), (4) November 4, 2012

(W33-07942423), (5) November 5, 2012 (W33-07944031), and (6) November 13, 2012 (W33-07942431; W33-07943819; W33-07943835), Respondent imported 283 on-highway motorcycles and 258 ATVs into the Los Angeles/Long Beach Seaport in violation of section 203(a) of the Act. These 283 on-highway motorcycles and 258 ATVs are included in the Subject Vehicles, which are described in Appendix A attached hereto.

21. In addition, on or about October 16, 2012, EPA inspected a sample on-highway motorcycle from container no. MSCU7004637, of house bill of lading no. MILN1206017, at Respondent's warehouse location. This container held 51 on-highway motorcycles with the model name Paparazzi 50, imported in violation of section 203(a) of the Act. These 51 on-highway motorcycles are included in the Subject Vehicles, which are described in Appendix A attached hereto.

22. Entries W33-07711018 and W33-07836013: On the EPA Declaration Forms 3520-1 provided for these entries, Respondent declared that these motorcycles were covered by a COC issued pursuant to the Recreational Vehicle Regulations. The EPA and the U.S. Department of Homeland Security's Bureau of Customs and Border Protection (CBP) at the Los Angeles/Long Beach Seaport inspected these motorcycles. EPA and CBP determined that they were equipped or came with a headlight, taillight and stoplight, as well as turn signals and mirrors. They also found that product specifications for the Buyang Model FS549 list the top speed as 46.6 miles per hour. The EPA concluded that these motorcycles are on-highway motorcycles (as defined above in Paragraph 12), and therefore are not covered by the COC issued pursuant to the Recreational Vehicle Regulations. Therefore, these motorcycles are uncertified.

23. Entry W33-07852358: At the time of importation, Respondent did not claim any exemptions or exclusions from the Act or the implementing regulations for these motorcycles. In fact, Respondent submitted an EPA Declaration Form 3520-1 stating that the motorcycles in this entry are covered by a COC for the model year 2011. EPA and CBP inspectors found that the motorcycles in this entry had emission control information labels that referenced a 2009 model year, even though the VIN numbers of the vehicles showed that they were manufactured in 2011. Therefore, these motorcycles were mislabeled. Respondent remediated the vehicles in this entry by correcting and replacing the emission control information labels.
24. Entries W33-07942423, W33-07942431, W33-07943819, and W33-07943835: On the EPA Declaration Forms, Respondent declared that these ATVs were covered by a COC issued to the engine family CSHKX.150ATA. EPA and CBP at the Los Angeles/Long Beach Seaport inspected these ATVs. EPA and CBP removed the exhaust system from a sample vehicle, sent it to an EPA contractor for analysis, and determined that the dimensions of the sample catalyst differ from the dimensions of the catalyst certified by the COC for engine family CSHKX.150ATA. Therefore, because the catalyst in the sample vehicle is different from the certified catalyst, these motorcycles are uncertified.
25. Entry W33-07944031: On the EPA Declaration Forms, Respondent declared that these ATVs were covered by a COC issued to the engine family CJNMX.110ATV. EPA and CBP at the Los Angeles/Long Beach Seaport inspected these ATVs. EPA and CBP removed the exhaust system from a sample vehicle, sent it to an EPA contractor for analysis, and determined that the large majority of cells in the catalytic converter are completely clogged so that exhaust gas cannot pass through them. EPA then requested that

Respondent send a second sample catalyst to confirm the results, and EPA found that the large majority of cells in the second catalytic converter also are completely clogged so that exhaust gas cannot pass through them. The COC for engine family CJNMX.110ATV lists a higher number of effective (e.g., non-blocked) catalyst cells than were found in the sample catalytic converters. EPA concluded that these ATVs are not covered by the COC issued to engine family CJNMX.110ATV. Therefore, these ATVs are uncertified.

26. Container MSCU7004637: Labeling on a sample highway motorcycle from this container indicated that it is covered by a COC for engine family CMTBC.049N2M. EPA removed the catalyst and sent it to an EPA contractor for testing. Analysis revealed that the dimensions and configuration of the sample catalyst differ from the dimensions and configuration of the catalyst certified by the COC for engine family CMTBC.049N2M. Therefore, because the catalyst in the sample vehicle is different from the certified catalyst, these motorcycles are uncertified.

### **Alleged Violations**

27. Respondent is liable for 592 separate violations of Sections 203(a) and 213(d) of the CAA, 42 U.S.C. §§ 7522(a), and 7547(d) and the Motorcycle and Recreational Vehicle Regulations, 40 C.F.R. Parts 86, 1051, and 1068, for the importation and/or sale of the Subject Vehicles for all the reasons described above in Paragraphs 20–26.

### **Civil Penalty**

28. For the violations of the CAA and the regulations promulgated thereunder at 40 C.F.R. Parts 86, 1051, and 1068 arising from the importation of the Subject Vehicles into the

United States, Respondent shall to pay to the United States a total of \$60,000 in accordance with the payment schedule set forth in Paragraph 29.

29. Installments of this penalty must be paid as follows:

- (1) Payment of \$20,000 due on or before March 15, 2013;
- (2) Payment of \$20,000 due on or before April 15, 2013; and
- (3) Payment of \$20,000 due on or before May 15, 2013.

30. Respondent agrees to pay the amount by certified check or cashier's check payable to the "United States of America," and shall mail the payments to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000  
ATTN: AED/MSEB #7840

Respondent may also pay online at [www.pay.gov](http://www.pay.gov); From the "Search Public Form" field, enter SFO 1.1," click "EPA Miscellaneous Payments - Cincinnati Finance Center," and complete the SFO Form Number 1.1.

31. Late payment of the civil penalty is subject to interest and fees as specified in 31 U.S.C. § 3717, plus the stipulated penalties as specified in Paragraphs 33 and 34 of the Agreement.

### **Notice**

32. A copy of the payment check(s) and the transmittal letter(s) shall be faxed to David Alexander at (202) 564-2109 no later than 24 hours after mailing the payment. All correspondence to EPA concerning this Agreement shall be sent to:



**Regular Mail**

David Alexander  
U.S. Environmental Protection Agency  
Mail Code 2242A  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460  
Attn: AED/MSEB #7840

**Courier Service**

David Alexander  
U.S. Environmental Protection Agency  
Ariel Rios South, Room 1117A  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20004  
Attn: AED/MSEB #7840

**Stipulated Penalties**

33. Respondent must pay a penalty of \$1,000 per day for failure to timely pay the penalty pursuant to Paragraphs 28–31 of this Agreement or provide proof thereof pursuant to Paragraph 31 of this Agreement.
34. Stipulated penalties under Paragraph 33 of this Agreement shall begin to accrue on the day after performance is due and shall continue to accrue until the day compliance is achieved. Stipulated penalties shall be paid in accordance with Paragraph 30 of this Agreement. In addition, a copy of the transmittal letter(s) and check(s) shall be sent to Robert G. Polin at the address specified in Paragraph 31 of this Agreement.

**General Provisions**

35. This Agreement becomes effective upon the date executed by EPA (Effective Date of the Agreement), at which time an electronic copy will be returned to Respondent.
36. Respondent hereby represents that the individual or individuals executing this Agreement on behalf of Respondent is authorized to do so on behalf of Respondent and that such execution is intended and is sufficient to bind Respondent and its agents, assigns, and successors.

37. Notwithstanding any other provision of this Agreement, upon Respondent's failure to perform, or default, or failure to comply with any term of this Agreement, EPA may refer this matter to the United States Department of Justice to recover civil penalties pursuant to Section 205 of the CAA, 42 U.S.C. § 7524, commence an action to enforce this Agreement, recover the civil penalty pursuant to Section 205 of the CAA, or pursue any other remedies available to it. Respondent specifically agrees that in the event of such default or failure to comply, EPA may proceed in an action based on the original claim of violations of the CAA and 40 C.F.R. Parts 86, 1051, and 1068. Respondent expressly waives its right to assert that such action is barred by 28 U.S.C. § 2462, any applicable statute of limitation, or other provisions limiting actions as a result of passage of time. Respondent acknowledges that its tax identification number may be used for collecting or reporting any delinquent monetary obligation arising from this Agreement. *See* 31 U.S.C. § 7701.
38. Respondent waives its rights, if any, to a hearing, trial or any other proceeding on any issue of fact or law relating to the matters agreed to herein.
39. Respondent represents that it will use its best efforts to remain compliant with all EPA regulations promulgated pursuant to Part A of Title II of the Act, 42 U.S.C. §§ 7521-7554 ("Motor Vehicle Regulations"). Respondent represents that it will take all necessary steps prior to the manufacture, importation or sale of any on-road or off-road vehicle or engine to be informed of the requirements of the Motor Vehicle Regulations relating to such activity, including, but not limited to, the following: (1) review the applicable Motor Vehicle Regulations before manufacturing or importing any vehicles or engines; (2) review EPA enforcement alerts and enforcement information located on EPA's web page at <http://www.epa.gov/enforcement/air/documents/index.html>; (3) hire legal counsel to

clarify any potential questions or issues; and (4) contact EPA's imports compliance hotline at 734-214-4100 to clarify any potential questions or issues.

40. The validity, enforceability, and construction of all matters pertaining to this Agreement shall be determined in accordance with applicable federal law.
41. This settlement is conditioned upon the truthfulness, accuracy and completeness of Respondent's disclosures and representations to EPA under this Agreement and the prompt and complete remediation of any violations in accordance with this Agreement.

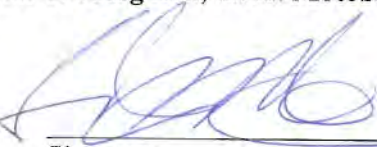
#### **Effect of Agreement**

42. Upon completion of the terms of this Agreement, the violations described in this Agreement shall be deemed by EPA to be resolved. Nothing herein shall limit the right of EPA to proceed against Respondent in the event of default or noncompliance with this Agreement, or for other violations of law, or with respect to other matters not within the scope of the Agreement. This Agreement in no way affects or relieves Respondent of responsibility to comply with other state, federal or local laws or regulations.

The following agree to the terms of this Agreement:

*Settlement Agreement*  
*In the Matter of El Sol Trading Inc., d.b.a. Motobravo, Inc.*  
*AED/MSEB – 7840*

**El Sol Trading Inc., d.b.a. Motobravo, Inc.**

By:  \_\_\_\_\_ Date: 3-14-2013  
Signature

Print Name: GLORIA MA

Print Title: CEO

Federal Tax Identification Number: 95-4542237

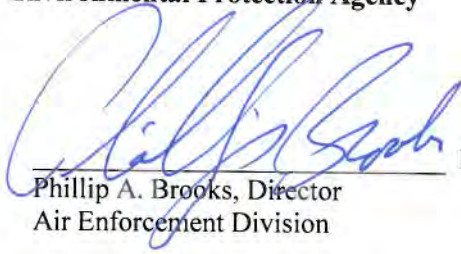
*Settlement Agreement*

*In the Matter of El Sol Trading Inc., d.b.a. Motobravo, Inc.*

AED/MSEB - #7840

**U.S. Environmental Protection Agency**

By:



Phillip A. Brooks, Director  
Air Enforcement Division

Date:

3/21/2013

Settlement Agreement  
 In the Matter of El Sol Trading Inc., d.b.a. Motobravo, Inc.  
 AED/MSEB – 7840

**APPENDIX A**

**Subject Vehicles**

| <b>Inspection/Entry Date</b>    | <b>Entry No.</b>               | <b>Vehicle Type</b>   | <b>Model</b>                      | <b>Alleged Engine Family</b> | <b>Qty.</b> |
|---------------------------------|--------------------------------|-----------------------|-----------------------------------|------------------------------|-------------|
| 3/21/2009                       | W33-07711018                   | On-highway Motorcycle | FS549-110                         | 8JPSX0.11D2B                 | 113         |
| 2/14/2011                       | W33-07386013                   | On-highway Motorcycle | FS-549-110<br>(Super Power Speed) | AJPSX0.11D2B                 | 120         |
| 5/28/2011                       | W33-07852358                   | On-highway Motorcycle | LK150GY-2                         | BMTBC0.15N1M                 | 50          |
| 11/4/2012                       | W33-07942423                   | ATV                   | YY150ATV-2                        | CSHKX.150ATA                 | 45          |
| 11/5/2012                       | W33-07944031                   | ATV                   | JLATV110                          | CJNMX.110ATV                 | 96          |
| 11/13/2012                      | W33-07942431                   | ATV                   | YY150ATV-2                        | CSHKX.150ATA                 | 45          |
| 11/13/2012                      | W33-07943819                   | ATV                   | YY150ATV-2                        | CSHKX.150ATA                 | 45          |
| 11/13/2012                      | W33-07943835                   | ATV                   | YY150ATV-1                        | CSHKX.150ATA                 | 27          |
| (inspection date)<br>10/16/2012 | MSCU7004637<br>(Container No.) | On-highway Motorcycle | Paparazzi 50                      | CMTBC.049N2M                 | 51          |